IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WA.No. 2079 of 2007

(*AGAINST THE INTERIM ORDER IN WPC.22117/2007 Dated 30/07/2007*)

APPELLANTS/ RESPONDENTS 1 & 2:
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1. THE DEPUTY CONSERVATOR,
   COCHIN PORT TRUST, WILLINGDON ISLAND,
   COCHIN-682 009.

2. THE BOARD OF TRUSTEES,
   COCHIN PORT TRUST, WILLINGDON ISLAND,
   COCHIN-682 009, REPRESENTED BY ITS CHAIRMAN.

BY ADV. SRI. A.M. SHAFFIQUE
ADV. SRI.E.K. NANDAKUMAR
ADV. SRI.A.K. JAYASANKAR NAMBIAR

RESPONDENTS/PETITIONER & 3RD RESPONDENT:
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1. DEA SHIPPING & FORWARDING,
   MAJURO STR, 4020, MARSHALL ISLAND,
   (OWNER OF THE VESSEL "M.V.MARIA S"),
   REPRESENTED BY ITS CEO & PRESIDENT,
   ERVIN SHIJAKU.

2. UNION OF INDIA,
   REPRESENTED BY ITS SECRETARY,
   MINISTRY OF SHIPPING, NEW DELHI.

BY ADV. SRI.V.J.MATHEW
ADV. SRI.P.K.SURESH KUMAR
R2 BY SRI.ABRAHAM THOMAS, CGC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2079 OF 2007

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Dated this the 4th September, 2007

J U D G M EN T

H.L. Dattu, C.J.:

This appeal arises out of the interim order passed by the learned single Judge in W.P.(C) No. 22117 of 2007 dated 30th July, 2007.

2. The facts in brief are: The petitioner in the Writ Petition is a ship owning company based in Marshall Islands and the owner of the vessel 'M.V. Maria S' . The said vessel got drowned in the Arabian Sea of the coast of Cochin on 30.06.2007. For the purpose of salvage and removal of wreck of 'M.V. Maria S', letters were sent by the owner of the ship dated 09.07.2007 and 12.07.2007, inter alia requesting the Cochin Port Trust to grant permission to remove the ship wreck safely without causing any obstruction to the Port's shipping movements.

3. The request of the petitioner was considered by the Deputy Conservator of Cochin Port Trust and accordingly, had intimated the owner of the ship that permission is granted to remove the wreck of 'M.V. Maria S' subject to the petitioner furnishing a bank guarantee for a sum Rs. 12 Crores with the FA & CAO , Cochin Port Trust as Security Deposit.

4. Aggrieved by the demand so made by the Deputy Conservator, Cochin Port Trust, the petitioner is before this Court by filing the Writ Petition (C) No.22117 of 2007 under Article 226 and 227 of the Constitution of India.

5. The main prayer in the Writ Petition is to issue a writ in the nature of certiorari to quash Ext. P12, wherein a condition has been imposed to

furnish bank guarantee for a sum of Rs.12 Crores for grant of permission to remove the wreck of 'M.V. Maria S' . The other prayers are consequential prayers to the the main prayer in the Writ Petition.

6. By way of interim prayer, the petitioner has sought for a direction to the respondents to suspend the condition regarding the bank guarantee in Ext. P12 letter and to permit the petitioner to remove the wreck of 'M.V. Maria S'.

7. In support of the prayers sought for in the Writ Petition, the petitioner had stated that the demand made by the respondents to furnish bank guarantee in a sum of Rs. 12 Crores for granting permission to remove the ship-wreck is arbitrary and illegal.

8. This court, while entertaining the Writ Petition had issued notices to the respondents. While considering the interim prayer, the learned single Judge has taken note of the affidavit of undertaking filed by the petitioner, wherein it is stated, that the petitioner shall furnish bank guarantee for Rs. 2 Crores in favour of the respondent-Cochin Port Trust as security for the salvage operation to be done by the petitioner and that the amount shall be retained by the Cochin Port Trust till the successful completion of the salvage operation. Yet another undertaking was also given by the petitioner in the affidavit of undertaking filed before this court that the Master of the vessel 'M.V. Maria S' shall remain in India till the entire salvage operation of the vessel is completed.

9. Taking into consideration the affidavit of undertaking so filed by the petitioner, the learned single Judge, by his order dated 30th July, 2007 has

granted permission to the petitioner to remove the wreck of 'M.V. Maria S' by furnishing bank guarantee for a sum of Rs.2 Crores in favour of the Cochin Port Trust. By the above said order, the learned single Judge has also appointed an Advocate Commissioner to supervise the salvage operation. Aggrieved by the said interim order passed by the learned single Judge, the respondents in the Writ Petition have filed this Appeal.

10, Shri A.M. Shaffique, learned counsel appearing for the appellants would contend, that, in view of Section 14 of the Indian Port Act, the learned single Judge could not have permitted the petitioner to remove the ship-wreck only by offering a bank guarantee for a sum of Rs. 2 Crores.

11. To appreciate the contention canvassed, the aforesaid section requires to be noticed and, therefore, the same is extracted. Section 14(1) of the Indian Port Act reads as under:

> *"14.* ***Raising or removal of wreck impeding navigation within limits of Port:-*** *(1) If any vessel is wrecked, stranded or sunk in any port in such a manner, as to impede or likely to impede any navigation thereof, the conservator shall give notice to the owner of the vessel to raise, remove or destroy the vessel within such period as may be specified in the notice and to furnish such adequate security to the satisfaction of the conservator to ensure that the vessel shall be raised, removed or destroyed within the said period.*
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> *Provided that the conservator may extend such period to such further period as he may consider necessary having regard to the circumstances of such case and the extent of its impediment to navigation."*

12. Before considering the contentions canvassed by Shri A.M. Shaffique, learned counsel for the appellants, it is appropriate to state here itself that the learned single Judge before granting the interim prayer had issued notice to the respondents/appellants herein and they were represented before the learned single Judge. However, they did not choose to file any objections to the main or the interim prayer, nor for the affidavit of undertaking filed by the petitioner.

13. It is the case of the petitioner/respondent herein, that the demand made by the respondents/appellants herein to furnish bank guarantee for a sum of Rs. 12 Crores for granting permission to remove the ship-wreck is arbitrary and illegal.

14. The learned single Judge, keeping in view, the fact that the petitioner himself has taken the responsibility of removing the ship-wreck and further being of the opinion that the security demanded by the respondents is arbitrary, has proceeded to permit the petitioner to remove the ship-wreck by furnishing a bank guarantee for a sum of Rs. 2 Crores alone.

15. The purpose for which the security that is contemplated under Section 14 (1) of the Indian Port Act is to see that if for any reason, the owner of the vessel or person in charge of the vessel fails to remove the ship wreck to the satisfaction of the Port authorities, the same will be done by the Port authorities at the cost of the owner of the vessel. In the instant case, the owner has taken the entire responsibility to remove the ship-wreck. The

petitioner has given an undertaking before this court that he shall remove the ship-wreck to the satisfaction of the Port authorities. A further undertaking is also given by the petitioner that till salvage operation is completed, the Master of the vessel - 'M.V. Maria S' shall remain in India. Keeping in view the undertaking so given by the petitioner, in our opinion, the learned single Judge has modified the order passed by the Cochin Port Trust demanding a bank guarantee for a sum of Rs. 12 Crores for granting permission to remove the ship-wreck.

16, In our opinion, in the facts and circumstances of the case made out by the petitioner, the interim order passed by the learned single Judge cannot be characterised either as arbitrary or illegal. The learned single Judge has taken all precautions to safeguard the interest of the Cochin Port Trust. Therefore, interference with the interim order passed by the learned single Judge is not called for. Accordingly, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/dk